

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LAMONT SHERROD,

Defendant-Appellant.

UNPUBLISHED

October 10, 2006

No. 261845

Oakland Circuit Court

LC No. 04-198232-FH

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for buying, receiving, possessing, concealing, or aiding in the concealment of a stolen motor vehicle, MCL 750.535(7). Defendant was sentenced to 18 months to 10 years' imprisonment. We affirm.

Defendant first argues the trial court erred in denying his motion for a directed verdict. We review de novo a trial court's decision on a motion for a directed verdict to "determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

MCL 750.535(7) states, in relevant part, that "[a] person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen, embezzled, or converted." Accordingly, in order to prove a defendant's guilt, a prosecutor must prove that: (1) some property was stolen; (2) the defendant bought, received, possessed, concealed, or aided in the concealment of the property; and (3) the defendant knew the property was stolen when he or she bought, received, possessed, concealed, or aided in the concealment of the property. CJI2d 26.1. On appeal, defendant contends that denial of his motion for a directed verdict was improper because the prosecutor failed to present evidence that defendant knew the vehicle was stolen.

Although defendant denied knowing that the vehicle he was driving had been reported stolen, the prosecutor presented circumstantial evidence that could have led a rational trier of fact to conclude otherwise. Specifically, evidence was introduced that defendant's brother reported the vehicle as stolen and that the vehicle, thereafter, belonged to State Farm Mutual Automobile Insurance Company after the insurer paid on the claim. However, defendant was in possession

of the vehicle at the time of his arrest. Moreover, defendant testified that he and his brother were close and that they had spoken after the vehicle had been reported stolen. In fact, menus from a restaurant owned by defendant's brother were found in the vehicle at the time of defendant's arrest. Further, the vehicle improperly contained license plates, a vehicle registration form, and insurance information that were issued for a different vehicle that was owned by defendant's mother. Defendant told police conflicting stories regarding the ownership of the vehicle. Viewing this evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was produced to persuade a rational trier of fact that defendant knew the vehicle was stolen at the time of his arrest. Accordingly, the trial court properly denied defendant's motion for a directed verdict.

Defendant next contends there was insufficient evidence to prove beyond a reasonable doubt that he committed the charged offense. Again, defendant specifically challenges the knowledge element of the crime. For the reasons articulated above, this Court concludes that defendant's challenge regarding the sufficiency of the evidence is meritless. The jury obviously discounted defendant's assertion that he was unaware that the vehicle had been reported stolen. This Court will not second-guess a jury's determination regarding witness credibility. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992).¹

Finally, defendant contends the court erroneously provided a cautionary accomplice instruction to the jury. A claim that an erroneous instruction was given to the jury is reviewed de novo. *People v Heikkinen*, 250 Mich App 322, 327; 646 NW2d 190 (2002). "The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court. This Court reviews jury instructions in their entirety to determine 'if error requiring reversal occurred.' There is no error requiring reversal if, on balance, the instructions fairly present the issues to be tried and sufficiently protect the defendant's rights." *Id.* (citations omitted).

Defendant objects to the following jury instruction:

Before you may consider what [defendant's sister] . . . said in court, you must decide whether she took part in the crime the defendant is charged with committing. [Defendant's sister] . . . has not admitted taking a party in the crime, but there is evidence that could lead you to think that she did. A person who knowingly and willing his [sic] or cooperates with someone else in committing a crime is called an accomplice. When you think about [defendant's sister's] . . . testimony, first decide if she was an accomplice. If after thinking about all the evidence you decide that she did not take part in this crime, judge her testimony as you judge that of any other witness, but if you decide that [defendant's sister] . . . was an accomplice, then you must consider her testimony in the following way. Was the accomplice's testimony falsely slanted to make the defendant seem not guilty because of the accomplice's own interests, bias or for some other reason?

¹ Amended on other grounds 441 Mich 1201; 489 NW2d 748 (1992).

Defendant contends no evidence was presented that his sister was an accomplice. A trial court is required to give a requested instruction only if the instruction is supported by the evidence or the facts of the case. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997). However, the determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court. *People v Perry*, 218 Mich App 520, 526; 554 NW2d 362 (1996).

CJI2d 5.5 defines “accomplice” as a “person who knowingly and willingly helps or cooperates with someone else in committing a crime.” Evidence was presented that could have led the jury to conclude that defendant’s sister was an accomplice. Specifically, defendant’s sister testified that she drove the subject vehicle to Georgia where defendant assumed possession. Evidence was introduced that the invalid registration and insurance documents found in the stolen vehicle were sent via facsimile from Georgia to defendant. Moreover, defendant’s sister testified that she renewed the license plates for defendant’s mother’s vehicle even though that vehicle had been in an accident and declared totaled. The improperly renewed license plates were placed on the vehicle in defendant’s possession. Based on this evidence, the jury could have concluded that defendant’s sister assisted defendant in concealing the true identity of the vehicle. Consistent with CJI2d 5.5, the trial court instructed the jury that they must decide for themselves whether defendant’s sister was an accomplice.

In *Heikkinen*, this Court held that a trial court could properly issue a cautionary accomplice instruction even where the alleged accomplice is testifying on behalf of a defendant. *Heikkinen, supra* at 337. Similar to the instruction in *Heikkinen*, the instruction in this case did not alter the prosecution’s burden of proof. The jury was simply instructed to decide whether defendant’s sister was an accomplice, and if so, to view her testimony with caution. Accordingly, the trial court did not abuse its discretion in providing the jury with the contested instruction.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Michael J. Talbot